inadvertent political overtones, however, Banner's work should cause us to reexamine our opinions of the *Māhele* and its advocates. The *Māhele* did not take place in a vacuum; Kamehameha III and his advisers were acutely aware of events elsewhere in the Pacific and may quite reasonably have believed that failure to create a property regime which foreign nations would respect would lead to the mass dispossession of Hawaiians in the event, then perceived as likely, that the Islands might soon come under the control of the U.S. or some European power. Although the *Māhele* was plagued with deficiencies that reduced its effectiveness as a means to preserve the land claims of the *maka'ainana* (commoners), Banner allows the comparison to be made between the settler-administered process for registering *Maori* land claims in New Zealand and the much more Native-friendly administration of the *Māhele* by Kamehameha III's Board of Commissioners to Quiet Land Titles. For example, the Commissioners (three out of five being Native Hawaiian) traveled throughout the Islands to take testimony on-site from claimants and their neighbors, whereas New Zealand's Native Land Court, staffed exclusively by British officials, required claimants to travel to distant towns to attend often dilatory proceedings that imposed substantial costs on claimants. Finally, as Robert Stauffer has demonstrated, criticism of the *Māhele* on the grounds that a mere 1 percent of the lands awarded went to the *maka'ainana,* is unfounded because the highly productive irrigated lands typically awarded to them were much more valuable, on an acre-for-acre basis, than were the unproductive uplands which constituted the bulk of the acreage awarded to the *ali'i* (members of the nobility). Archaeologists tell us that at the time of Captain James Cook's first visit to Hawai'i in 1778, the Islands' population was bumping up against the carrying capacity of the land as limited by its ability to produce food, and population pressure had caused cultivation to be extended to relatively marginal lands. By the time of the *Māhele* seventy years later, catastrophic decreases in the Native population as a result of newly introduced diseases had caused the abandonment of much of the land that had been under cultivation at the time of Cook's voyage. Land without tenants to make it economically productive would have been of relatively little value to the ali'i to whom it was awarded, and the architects of the *Māhele* cannot reasonably be criticized for failing to foresee the manner in which improved irrigation techniques and the coming of large-scale sugar plantations would revolutionize the Hawaiian economy in the years to come, or with failing to foresee that subsequent legal developments (especially legislation allowing changes in land ownership through adverse possession and nonjudicial foreclosure) would greatly facilitate the loss of Hawaiian land.

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Trevor Dean, *Crime and Justice in Late Medieval Italy,* Cambridge: Cambridge University Press, 2007. Pp. ix + 226. $105.00 (ISBN 978-0-52186-448-0).

This book pursues three key goals. The first is to challenge the view, implicit in much of the historiography, that Florence and Venice are representative of the

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entire Italian peninsula in the late Middle Ages. In an effort to explore the full array of different, local contexts, the author examines a huge number of areas, stretching from such towns as Bologna, Mantua, Modena, Reggio, Savona, and Lucca to more peripheral territories such as Piedmont and Savoy, and the kingdoms of Naples and Sicily.

The author's second goal is to undertake a comparative history. Referring to the work of Marc Bloch, the author vindicates the "view from the top down" which is produced by comparing—by sorting out "local" from "general" causes and by establishing connections between phenomena which were separate in time and space.

A third goal is to address the nature and peculiarities of judicial records. In the Introduction the author reflects on this topic by examining the different approaches that historians have taken to such records. Marc Bloch is once again evoked to highlight the distinction between the intentional and unintentional information that we can find in historical sources. The author deploys Arlette Farge's analysis of the nature of testimony—words that are often pronounced against the witness's intention and that are not to be read by anyone else—to argue that the source is an unintentional and unwitting clue that generates a "reality effect." But the author also considers various historians who have emphasized the constructed and intentional nature of judicial records, thus questioning whether there is any real possibility of gleaning from these sources anything other than that which their compilers intended. Andrea Zorzi, for example, has questioned whether it is ever possible to move beyond a history of criminal justice to a history of criminality. As he suggests, it may well be the case that judicial sources inscribe criminal "facts" within their own categories, and in so doing, necessarily bend and reconstruct them. Moreover, influenced by the approaches pioneered by Carlo Ginzburg and Claude Gauvard, the author observes that, given the diverse and discontinuous nature of criminal sources, a cumulative approach to history in which developments are shown to occur in a linear, continuous fashion is seldom plausible.

The author adopts a methodological approach designed to address each of these three goals and which shapes the book's structure as well. This approach does not avoid the problem of the discontinuous nature of the sources, or that of the relationship between the narrative structure of the source and the "truth" of its contents. Instead, it faces these problems directly. Following in the path of Samuel Cohn and Steven Epstein, the author organizes his argument in two parts. The first identifies the characteristics of five types of legal sources that were very common in the late middle ages: trial records, chronicles, fiction, statute law, and *Consilia.* The second studies a set of indictable crimes examined by those very sources: insults and revenge, sex crimes, potions and poisons, violence, and theft. Devoted to examining the sources, the first part of the book is organized on the basis of two principles: the place to which the sources refer, and the relationship between the narrative structure of the text and its factual content. In the second part of the book, the author's analysis of different types of crime varies according to the scope of his inquiry: for instance, in the case of thefts, only Bologna is taken into consideration. At the same time, he scrutinizes each specific type of crime through different legal sources.

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In both parts of the book, two connecting threads are easily recognizable: the relationship between cultural and social history (i.e., the relationship between fiction and archives); and the historian's critique of anachronistic categories of analysis (first of all, the term Renaissance, from which the author keeps his distance). The results of such a complex and ambitious undertaking are made explicit in the closing section of every chapter, where the author presents a short but clear concluding analysis. The author lives up to the promise made in the Introduction: that is, to expand our knowledge of late Medieval Italy beyond the cases of Florence and Venice. Taking into account a plurality of local situations leads to two important conclusions, concerning both procedure and types of crime. First, a linear development of the nature of justice—inquisitorial, accusatorial, negotiated, and repressive—cannot be observed and, instead, these models "vary both between cities and across time" (200). This means that transformations in procedure must be understood as context-specific, rather than the product of some kind of linear evolution. The second conclusion is no less important and concerns the variety of crimes prosecuted and their change over time. The author's scrutiny of different urban areas reveals a growth and a diffusion of new forms of violence—namely the duel—as well as a parallel decrease in the amount of theft and greater attention and strictness towards sexual crimes (adultery, rape, clandestine marriage, sodomy), blasphemy, and sorcery. In the author's view, this in turn suggests the emergence of "a stronger religious rationale" for criminal punishment, as well as a stronger sense of civic decorum and a growing belief in the importance of protecting marriage as an institution.

The book's findings concerning revenge are also quite rich. Taking into account the different ways in which revenge is treated by chronicles, juridical tracts, or courts allows the author to elaborate on relationships between social history and the history of the law; between normative and narrative sources. And the book's recurring exploration of how otherwise similarly situated strangers and locals were treated differently by different components of the legal system is also very interesting. It suggests that the status of citizen or of foreigner often helped to determine not only the harshness of the punishment inflicted, but also to define the very nature of a crime.

One of the book's limitations is that it fails clearly to identify the cause behind so much local variation in criminal practice. In this respect, the book does not live up to the most ambitious of the goals set forth in the Introduction—namely, to engage in comparative history. Taking into account different urban realities often leads the author merely to juxtapose, rather than to compare. A truly comparative account would single out a number of variables that would allow us to grasp, to analyze, and to interpret the range of local approaches to criminal justice. Why does violence burst out in different places (e.g., Padua, Asti, or Fabriano)? Why is it that "the definitions of assault in these cities are, perhaps predictably, different, though they share the elements of aggressive movement, intent and anger" (172)? Why, precisely, is the status of citizen or of foreigner associated in different towns with different rites of violence? Why are some crimes, such as sodomy, seriously punished in some towns and almost entirely ignored in others? In most cases, the very useful information that the author has garnered about different local situa-

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tions is not brought to bear for the purpose of singling out elements susceptible to comparative analysis. The author's demonstration that there was a great variety of different, local approaches to crime represents one of the book's great achievements. But the reader is left with a number of questions about the reasons for such variety.

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James Q. Whitman, *The Origins of Reasonable Doubt: Theological Roots of the Criminal Trial,* New Haven: Yale University Press, 2008. Pp. 288. $40.00 (ISBN 978-0-300-11600-7).

This book advances the surprising thesis that the law's requirement of proof "beyond a reasonable doubt" in criminal trials originally had nothing to do with the rights of defendants. It was not meant to protect the innocent. Its purpose was actually to protect the jurors from their own anxieties, even to persuade them to convict. The problem was that they might allow scruples of conscience to hinder the effective punishment of crime. The requirement's source lies not in an old rule placing the burden of proof on the person seeking to convict a defendant, but in the thought and literature of moral theology. Most of the important contributors were not lawyers at all. They were Thomas Aquinas, Leonardus Lessius, Jeremy Taylor, William Paley, and a host of learned casuists.

To make this argument, Professor Whitman begins with the sensible assumption that there is much to be learned about criminal trials by adopting the perspective of those who made the ultimate decision of guilt or innocence. This meant the judges in most Continental systems. In England, with which the bulk of this book is concerned, it meant the juries of the royal courts. Because almost no first-hand evidence exists about what judges and juries actually thought, the author is obliged to speculate, and here is where the contribution of the book lies. He plausibly assumes that ordinarily jurors and judges would have been more concerned about themselves than about doing justice. In the Middle Ages, caught between Scylla and Charybdis, they would have had ample reason for concern. On the one side lurked the possibility of vengeance by the family of anyone they convicted wrongly. On the other side loomed the likelihood of ultimate condemnation by God if they committed perjury. Today the former danger has disappeared, and the latter danger has been forgotten. Christianity has lost its hold on our intellects. But these would have been compelling and urgent matters to judges and jurors in earlier centuries. Indeed they hold the key to understanding the history of the criminal trial. No one would want to stand before God with the blood of an innocent man on his hands. The only safe thing would be either to acquit or somehow to avoid the dilemma altogether. This attitude presented an obstacle for society's governors, who sought effective ways of punishing criminals, and one way they remedied the situation was by convincing finders of fact that they must convict unless their doubts about

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